



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

2006 NOV -1 PM 2:35

FILED
EPA REGION VIII
HEARING CLERK

KEN'S EQUIPMENT REPAIR, INC.;

CAROL GRAYBILL, d/b/a YELLOWSTONE

TRUCK STOP; and

YELLOWSTONE TRUCK STOP, INC.

Respondents

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FINAL ORDER

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DOCKET NO.: SDWA-08-2006-0013

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Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreements resolving this matter are hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of each respective Consent Agreement, effective immediately upon receipt by the Respondents of these Consent Agreements and Final Order.

Dated this 1st day of November, 2006.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Docket No.: SDWA-08-2006-0013

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In the Matter of:

Carol Graybill, dba Yellowstone
Truck Stop and
Yellowstone Truck Stop, Inc.

Respondents.

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents Carol Graybill, dba Yellowstone Truck Stop and Yellowstone Truck Stop, Inc. (Respondents), by their undersigned representatives, hereby consent and agree as follows:

1. EPA issued to Respondents a First Amended Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (Complaint) filed on March 27, 2006, alleging certain violations of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., relating to underground injection controls (UIC). The Complaint was also issued to Ken's Equipment Repair, Inc.

2. The Complaint alleged that Respondents violated the SDWA by (a) failing to comply with 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1) by owning a Class V disposal facility which, through injection activity, allowed the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. part 142; and (b) failing to comply with 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b) for failure to close or retrofit the Class V disposal system in a manner that would keep contaminants from entering an underground source of

drinking water (USDW). The location of the facility is at 1224 Highway 10 West, Livingston, Montana. Ken's Equipment Repair, Inc. has provided evidence to EPA that the Class V disposal system has been permanently closed.

3. Respondents admit that EPA has the jurisdictional authority to issue the Complaint and settle this case pursuant to this Consent Agreement, but do not confirm or deny the remaining allegations, including the findings and alleged violations.

4. Respondents waive their its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondents and Respondents' heirs, successors and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

6. To settle this matter, Respondents, among other things, hired an environmental consultant (Resource Technologies, Inc.) to help Respondent remediate the site by removing all visibly contaminated soils (an estimated 350 yards) surrounding the system located at the Ken's Equipment Repair, Inc. facility. Respondents received a Montana Department of Environmental Quality (MDEQ) landfarm permit to transport the soil to the landfarm site located five miles northwest of Clyde Park, Montana and owned by Robert and Donald Scott. The transportation and landfarming of the soils took place during the August 21-23, 2006 timeframe. Respondents have submitted to EPA a copy of the MDEQ permit and documented proof of the landfarming, including photos and receipts. Additionally, as part of the remediation, Respondents, removed the actual disposal system

outside of the Ken's Equipment Repair, Inc. facility. The remediation described above taken by Respondents to settle this action shall be in lieu of a cash penalty. Respondents' co-respondent, Ken's Equipment Repair, Inc., pursuant to the terms of a separate Consent Agreement, shall pay a monetary penalty for the violations asserted in the Complaint.

7. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the SDWA and its implementing regulations.

8. Failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Consent Agreement.

10. The undersigned representatives of Respondents certify that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

11. This Consent Agreement applies to and is binding upon EPA and upon Respondents and Respondents' successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets of real or personal property shall not alter Respondents' responsibilities under this agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

13. All parties shall bear their own costs and attorney fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

Carol Graybill, dba Yellowstone Truck Stop

Date: 10-3-06

By: Carol J. Graybill
Carol Graybill

Date: 10-3-06

Yellowstone Truck Stop, Inc.

By: Carol J. Graybill
Carol Graybill, President

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Date: 10/25/2006

By: Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No.: SDWA-08-2006-0013

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HEARING CLERK

In the Matter of:

Ken's Equipment Repair, Inc.

Respondent.

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Ken's Equipment Repair, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. EPA issued to Respondent a First Amended Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (Complaint) filed on March 27, 2006, alleging certain violations of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., relating to underground injection controls (UIC). The Complaint was also issued to Carol Graybill, dba Yellowstone Truck Stop and Yellowstone Truck Stop, Inc.

2. The Complaint alleged that Respondent violated the SDWA by (a) failing to comply with 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1) by operating and maintaining a Class V disposal facility which, through injection activity, allowed the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. part 142; and (b) failing to comply with 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b) for failure to timely close

or retrofit the Class V disposal system in a manner that would keep contaminants from entering an underground source of drinking water (USDW). The location of the facility is at 1224 Highway 10 West, Livingston, Montana. Respondent has provided evidence to EPA that the Class V disposal system has been permanently closed.

3. Respondent admits that EPA has the jurisdictional authority to issue the Complaint and settle this case pursuant to this Consent Agreement, but does not confirm or deny the remaining allegations, including the findings and alleged violations.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

5. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

6. Respondent consents and agrees to pay a civil penalty in the amount of twenty six thousand five hundred dollars (\$26,500.00), in the manner described below in this paragraph. EPA finds this penalty amount is appropriate after applying the statutory factors in section 1423(c)(4)(B) of the SDWA with the facts and circumstances of this case.

- a. Payment is due within 30 calendar days from the date of the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68010727

A copy of the check shall be sent simultaneously to:

James H. Eppers
Senior Enforcement Attorney (8ENF-L)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and to

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Should Respondent so choose, but in compliance with subparagraphs a-e of this paragraph 6, it may pay the civil penalty pursuant to the following payment schedule:
 - i. within 30 calendar days from the date of the Final Order, payment of five thousand dollars (\$5,000.00);
 - ii. within 180 calendar days from the date of the Final Order, payment of ten thousand seven hundred fifty dollars (\$10,750.00) plus interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 totals \$10,911.52; and
 - iii. within 360 calendar days from the date of the Final Order, payment of ten thousand seven hundred fifty dollars (\$10,750.00) plus interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 totals \$10,911.52.

7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.

8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

10. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he represents to the terms and conditions of this Consent Agreement.

11. This Consent Agreement applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets of real or personal property shall not alter Respondent's responsibilities under this agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

Ken's Equipment Repair, Inc.

Date: 10-11-06

By: Ken Merideth
Ken Merideth
President

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Date: 10/25/2006

By: Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **FINAL ORDER/CONSENT AGREEMENTS** in the matter of **KEN'S EQUIPMENT REPAIR, INC., CAROL GRAYBILL, d/b/a YELLOSTONE TRUCK STOP; and YELLOWSTONE TRUCK STOP, INC., DOCKET NO.: SDWA-08-2006-0013** was filed with the Regional Hearing Clerk on November 1, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to James H. Eppers, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on November 1, 2006, to:

Lee Bruner, Esq.
Poore, Roth & Robinson, P.C.
1341 Harrison Avenue
Butte, MT 59701

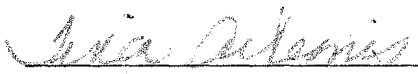
And

Dennis Munson, Esq.
716 South 20th Avenue, Suite 101
Bozeman, MT 59718

And telefaxed to:

U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268
513-487-2063

November 1, 2006


Tina Artemis
Regional Hearing Clerk